

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Parsons*, 2017 NSSC 269

Date: 20171016

Docket: CRP444456

Registry: Pictou

Between:

HER MAJESTY THE QUEEN

v.

DYLAN DOUGLAS MICHAEL PARSONS

Decision

Judge: The Honourable Justice Michael J. Wood

Heard: June 12, October 6 and 13, 2017, in Pictou, Nova Scotia

Oral Decision: October 13, 2017

Counsel: Bill Gorman, for the crown
Quy Linh, for the defence

By the Court (Orally):

[1] Mr. Parsons was charged with threatening to use violence against a justice participant in order to impede the performance of her duties contrary to s. 423.1(3) of the *Criminal Code*.

[2] The offence is alleged to have occurred on August 18, 2015, while he was an inmate at Northeast Nova Correctional Facility. Correctional Officer Kayla Lamb is the justice participant in question.

[3] The evidence relied upon by the crown about the incident is essentially the testimony of CO Lamb and the video recordings made before and after the incident.

[4] Mr. Parsons was in the segregation unit at the institution and CO Lamb was assigned to work there on the overnight shift.

[5] At approximately 7:35 p.m. CO Lamb and two other officers entered Mr. Parsons' cell because they believed he was in possession of "unauthorized items", which in this case were excess clothing and towels. Exhibit No. 1, was a video of the interior of the cell. It shows a total of six correctional officers in the cell over the course of this event, which lasted approximately ten minutes.

[6] There is no audio on that recording but CO Lamb described Mr. Parsons as very irate – she said he was yelling, red faced and trying to fight.

[7] During the course of this incident Mr. Parsons was handcuffed and stripped of his clothes. The mattress and all other items were removed from the cell. CO Lamb thought that he was left with his underwear on, but the video in Exhibit No. 1 ends when he is naked.

[8] CO Lamb believed Mr. Parsons was offered a "suicide gown" but she is not sure. It would have been the captain's decision. The result was that Mr. Parsons remained in his cell unclothed.

[9] The next incident recalled by CO Lamb occurred when Mr. Parsons had apparently covered the camera in his cell and refused to remove that obstruction. Correctional officers again entered the cell to uncover the camera. CO Lamb said this was at approximately 8:00 p.m. and there was no use of force.

[10] After CO Lamb's testimony on June 12th, the trial was adjourned because of the discovery of video evidence. When it resumed on October 6, 2017, CO Lamb was recalled and the video introduced. Exhibit No. 2 contains several clips from a hand-held camera showing three separate entries into Mr. Parsons' cell. These recordings had sound but were not date or time stamped. Counsel agree that the events shown in Exhibit No. 2 took place after the time of the alleged threat.

[11] There is no video evidence of the entry into Mr. Parsons' cell at 8:00 p.m. nor any explanation why this is missing when all other entries were recorded.

[12] At 8:30 p.m. CO Lamb was doing her rounds and observed that Mr. Parsons was extremely agitated – she said he was yelling, upset and hitting the door to his cell. She has had prior dealings with him, all of which had been positive. In her view this evening was out of character for him.

[13] While in his cell CO Lamb says that Mr. Parsons yelled:

I will shit-bomb you and stab you up because you can't keep me in here. I have no problem assaulting you and doing Pen time because that will make me look super cool. I'll make sure I end your career.

[14] CO Lamb said she was taken aback by these comments and took them seriously. She wondered if her life would be in danger. She reported the incident to her superiors.

[15] A charge under s. 423.1 requires conduct that is intended to provoke a state of fear in a justice participant with the intent to impede the performance of their duties. In this case the indictment alleges a threat by Mr. Parsons directed to CO Lamb.

[16] In my view there is no doubt a correctional officer is a justice participant and so that requirement has been met.

[17] Mr. Linh, on behalf of Mr. Parsons, argued that the words in question were not in fact spoken and that evidence was fabricated by staff at Northeast Nova Correctional Facility to cover up alleged mistreatment of Mr. Parsons by correctional officers that evening. This is a very serious allegation and in my view there is no evidence presented here that would support it. I am satisfied based on the evidence of CO Lamb, that the words were spoken as she recorded them in her notes made that day.

[18] I am also satisfied that the comments were directed to CO Lamb based upon evidence that she was the only person in immediate vicinity of the door and that Mr. Parsons was looking at her through that door when the words were spoken.

[19] These conclusions establish that the crown has proven the *actus reus* (or actions) required for the charge under s. 423.1 and I am satisfied that this proof is beyond a reasonable doubt.

[20] I must now consider whether the required mental element (or *mens rea*) has also been proven to that standard.

[21] The charge under s. 423.1 requires proof that the person had the intention to provoke a state of fear in a justice participant and that this was done in order to impede the performance of their duties.

[22] This is a specific intent offense which means I must be satisfied that Mr. Parsons had this intent and not some theoretical reasonable person in similar circumstances.

[23] I have no direct evidence as to Mr. Parsons' intention and so I must consider whether I can infer it from the circumstances as set out in the evidence. Each case is unique and will be decided on its own facts.

[24] For example in the case of *R. v. Bergeron*, 2015 BCCA 177, the accused went on a 15 minute rampage at and around the courthouse in Prince George, British Columbia. This rampage arose out of his belief that he was wrongly convicted. In the course of that event he assaulted a crown prosecutor who he claimed was involved in his conviction. In light of his behavior over the entire 15 minute episode the trial judge concluded that there was an intention to impede that prosecutor in his duties. The Court of Appeal deferred to the trial judge on his finding, which was based on the evidence presented, and as a result dismissed the appeal.

[25] In this case CO Lamb's evidence paints a clear picture that Mr. Parsons was upset and frustrated and that this escalated through the evening. At the time of the threat he was yelling and hitting or kicking the cell door. This was very uncharacteristic based on her prior dealings with Mr. Parsons.

[26] It is not clear to me exactly what was affecting Mr. Parsons that evening, although it could have been the multiple entries by correctional officers into his

cell leaving him naked and without anything to sit on other than a concrete bench. Whether his feelings were justified or not is irrelevant to the issue of his intent when he made the threat in question.

[27] A spontaneous outburst made in a situation of extreme distress or frustration may not be accompanied by the intention that the words used would have the consequences which would normally flow from them. It is all a matter of context.

[28] In the *Bergeron* decision which I referred to earlier, the duration, pattern and focus of the accused's conduct allowed the court to conclude that he was cognizant of what the court referred to as the "inevitable consequences" of his actions. His extreme anger did not prevent the trial judge in that case from drawing this inference from the evidence. (See para. 48 of 2013 BCSC 443)

[29] In this case Mr. Parsons' words were an isolated statement made in the course of a very difficult and frustrating evening for all participants. Despite extensive subsequent dealings with CO Lamb and other correctional staff, the threat was not repeated.

[30] Mr. Gorman argues, on behalf of the crown, that the words themselves show that Mr. Parsons had the required intent to create fear and impede the performance of CO Lamb's duties because of the reference to ending her career. He says that is a reference to her career as a correctional officer.

[31] When I examine the circumstances it is clear to me that at least part of Mr. Parsons' anger and frustration that evening relates to his treatment by correctional officers. He had been subject to an application of force, had his cell emptied and his clothes removed. Apparently this was because he had an extra shirt and towel, items which some correctional officers might permit an inmate to have.

[32] I would expect that Mr. Parsons would want his treatment to change and I conclude that this was at least part of his intention in making his comments to CO Lamb. His use of the phrase "you can't keep me in here" reflects his focus on the situation he found himself in.

[33] The comment that he made to the effect that assaulting a correctional officer will result in more jail time (his words were "doing Pen time"), shows someone who understands the implications of what he is threatening to do.

[34] The concluding statement that he will make sure that he ends CO Lamb's career reinforces my view that he wants to affect her behavior towards him at that time and perhaps in the future.

[35] On its face, Mr. Parsons' threat to CO Lamb expresses a desire to seriously harm her and impact her work as a correctional officer by shortening her career. That is what he said and the logical conclusion is that Mr. Parsons intended to create a state of fear that would result in her treating him differently. That amounts to impeding the performance of her duties.

[36] Mr. Parsons' frustration and anger, as well as the isolated nature of the threat, does not in my view raise a reasonable doubt with respect to the intention and as a result the crown has proven this element of the offence as well beyond a reasonable doubt.

[37] In light of these findings I find Mr. Parsons guilty of the offense as charged.

Wood, J.